

STATE BOARD OF EQUALIZATION

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Executive Secretary

May 12, 1987

Dear Mr.

On March 23, 1987, we responded to your request for our opinion on whether a proposed purchase of real property by one of your clients would result in a change in ownership. The facts as set forth in your request were as follows:

In 1973, your client entered into a sale/leaseback transaction pursuant to which it sold the fee interest in the land underlying improvements it owned. At the same time, pursuant to the terms of the sale/leaseback transaction, your client and the new owner of the real property also entered into a ground lease with an original term of 55 years and a commencement date in December 1973. The Lease grants your client a right of first refusal to repurchase the fee. The owner was recently approached by a prospective buyer and pursuant to the right of first refusal contained in the Lease, the owner has put your client to an election to purchase the fee. You asked whether the purchase by your client of the fee will result in a change in ownership of the land.

We responded that under Board Rule 462(f)(2)(B)(i), the proposed purchase would not be a change in ownership because the transfer of the fee to your client would be a transfer of a lessor's interest in real property subject to a lease with more than 40 years remaining on its original term. In making this determination, we pointed out that we had not reviewed the Lease or any other documents related to the proposed transaction, and, therefore, our opinion was based solely on the facts set forth in your letter.

We have received a second letter from you dated April 10, 1987, concerning the proposed transaction. In your April 10 letter, you seek a clarification of the application of Rule 462(f)(1)(A)(iii) to the proposed transaction. Rule 462(f)(1)(A)(iii) provides as follows:

Adm

May 12, 1987

(1) The following transfers of either the lessee's interest or the lessor's interest in taxable real property constitute a change in ownership of such real property: (A) Lessee's Interest: . . . (iii) the termination of a leasehold interest which had an original term of 35 years or more.

You ask our opinion on whether the application of Rule 462(f)(1)(A)(iii) affects the opinion contained in our March 23, 1987 letter.

The conclusion contained in our March 23 letter is not affected by the application of 462(f)(1)(A)(iii). Rule 462(f)(1)(A)(iii) would apply if the Lease ran its full term or was otherwise terminated and the beneficial interest of the property was returned to the owner. The transfer of the fee to your client is a transfer of a lessor's interest in real property subject to a lease with more than 40 years remaining on its original term and is therefore expressly excluded from the definition of change in ownership under Rule 462(f)(2)(B)(i).

If you have any questions or if you wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks
Tax Counsel

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0512D

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton